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SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

SUMMARY RECORD OF THE 7th MEETING

Held at Headquarters, New York,
on Tuesday, 29 August 1978, at 10.30 a.m.

Chairman: Mr. Cuevas CANCINO (Mexico)

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The meeting was called to order at 10.55 a.m.

CONSIDERATION, PURSUANT TO PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/150, OF PROPOSALS AND SUGGESTIONS SUBMITTED BY STATES (continued) (A/AC.193/L.3)

1. Mr. KOSTOV (Bulgaria) said that the conclusion of a world treaty on the non-use of force would help to promote trust among States and to strengthen international security, the foundations of contemporary international law and the structure of international relations in general. A well-formulated and universally supported world treaty would exert a strong influence on all Governments, discouraging global power politics and encouraging the settlement of differences exclusively by peaceful means.

2. Despite the provisions of Article 2, paragraph 4, of the United Nations Charter, the world continued to witness a series of "local" wars, most of which constantly threatened to escalate into global conflicts with disastrous consequences. The United Nations could not stand idly by while mere lip-service was paid to the principle of the non-use of force. The violation of that principle, an attack against the corner-stone of the structure of international relations and of the international legal order, could lead to their total disintegration. Accordingly, Bulgaria had from the outset strongly supported the Soviet initiative regarding a world treaty on the non-use of force in international relations, an initiative designed not to favour any one State or group of States but to promote international law and consolidate the international legal order. The draft World Treaty submitted by the Union of Soviet Socialist Republics (A/AC.193/L.3) was an excellent basis for the work of the Committee. He wished to draw particular attention to the provisions contained in article I, paragraph 2, and in the final paragraph of article II. It was most fitting to link the principle of the non-use of force with measures to reduce the risk of military confrontation and curb the arms race.

3. The principle of the non-use of force had to be considered in close conjunction with other principles and provisions of the Charter, such as the peaceful settlement of disputes, the right of self-defence, the question of aggression and the right to self-determination. The prohibition of the use of force was essential to the attainment of several principles embodied in the Charter, such as the equality and independence of States and the elimination of diktat, colonialism and discrimination. Moreover, the legal justification for a treaty on the non-use of force could be found in Article 13, paragraph 1 (a), of the Charter. His delegation rejected the argument that such a treaty might duplicate or deviate from the Charter. Since its inception, the United Nations had progressively codified and developed Charter principles and provisions, and it was only natural that they should be further interpreted and concretized as international relations developed. That fact had been acknowledged by the General Assembly when it had decided in resolution 1815 (XVII) to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as

(Mr. Kostov, Bulgaria)

to secure their more effective application. That initiative had been brought to a successful conclusion with the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The major question now before the Special Committee was whether States members of the Committee had the necessary political will and were prepared to carry forward the progressive development and codification of international law. On the basis of a constructive attitude and a spirit of consensus, it would be possible to produce a universally acceptable document binding on all nations.

4. Mr. AL-QAYSI (Iraq) said that, instead of enhancing the effectiveness of Charter provisions in international relations, certain States, in order to further selfish national interests, had exploited the short-comings of the international system and resorted to the threat or use of force for the purposes of aggression, acquisition of territory, colonialism and the denial of self-determination and to prevent independent nations from exercising their sovereign right to control their natural resources. The Soviet initiative to highlight the importance of enhancing the effectiveness of the Charter principle concerning the non-use of force was therefore timely, necessary and relevant.

5. No non-aligned country had escaped in its recent history from the threat or use of force to deny it an independent existence. Iraq's continuing support for the conclusion of a world treaty on the non-use of force in international relations was prompted by its own experience and by the suffering experienced by the Arab States at the hands of the imperialists, the Zionists and the monopolistic multinational corporations. On the basis of that experience, the non-use of force in international relations had become one of the cardinal principles of Iraqi foreign policy.

6. His delegation felt that the draft World Treaty submitted by the Soviet Union could be improved in terms of concepts and drafting through the collective efforts of the Special Committee. The document eventually produced by the Committee should contain provisions on procedural mechanisms designed to secure the maximum adherence of States in their international conduct to the principle of the non-use of force. On that point, the draft simply repeated in a general form the provisions of the Charter. The draft did not contain details on the notion of a "threat" to use force, although the purpose of the draft and the mandate of the Special Committee were to concretize the provisions of Article 2, paragraph 4, of the Charter, where the questions of the threat of force and the use of force were inseparably linked.

7. To avoid confusion and in conformity with Charter obligations, the draft should contain a specific reference to the inherent right of self-defence, and his delegation welcomed the readiness of the Soviet Union to accommodate that position. In addition, it was absolutely necessary to include a provision stating that nothing in the Treaty could prejudice the right of peoples subject to colonial and racist régimes and foreign occupation to use all the means at their disposal to exercise their inherent right to self-determination and independence and to liberate occupied territories. Article III of the draft might lead to unacceptable

(Mr. Al-Qaysi, Iraq)

results by enabling States not to be bound absolutely by the principle of the non-use of force, since no distinction was made as to the nature of earlier treaties and agreements concluded by States. That particular aspect of the draft needed to be ameliorated through careful and precise drafting in conformity with the language of the Charter.

8. Referring to the statement made by the United Kingdom representative at the 6th meeting, he warned that it would be counterproductive to introduce an atmosphere of cold war gimmickry and rhetoric. It was ironic that the representative of the United Kingdom should point his finger at other States in drawing attention to annexation and lack of objectivity, and it was to be hoped that the work of the Special Committee would not be permitted to proceed in the direction taken by that representative. On the basis of good faith and realism, the Committee could play a constructive role, enhancing the effectiveness of the principle of the non-use of force in the interests of peace and security. Negative attitudes regarding the utility of the endeavour were unjustified, since no concrete alternative to it was yet visible.

9. Mr. JACOVIDES (Cyprus) recalled that the principle prohibiting the threat or use of force in international relations and its corollary, that of the peaceful settlement of international disputes, were the very foundation of the United Nations system and were also firmly entrenched rules of international law from which no derogation was permitted.

10. More specifically, the principle of the non-use of force had acquired force of law through Article 2, paragraph 4, of the Charter, which in effect prohibited entirely any threat or use of armed force between independent States except in individual or collective self-defence under Article 51 of the Charter or in execution of collective measures taken under the Charter for the purpose of maintaining or restoring peace. Armed reprisals to obtain satisfaction for an injury and armed intervention as an instrument of national policy otherwise than for self-defence were illegal under the Charter. As for the exception based on Article 51, the prevalent view had been that it should be interpreted in the strict sense and that a State which, allegedly or in fact, found itself threatened by war preparations by another State should have immediate recourse to the Security Council rather than resort to measures of anticipatory self-defence.

11. The legal content of Article 2, paragraph 4, had been clarified and further elaborated upon over the years by a number of landmark resolutions and declarations and by numerous bilateral and multilateral treaties. There could thus be no doubt about its place in contemporary international law. Yet, 33 years after the adoption of the Charter, there had been more than 100 local wars and international armed conflicts in violation of the principle of the non-use of force. It was therefore obvious that something more was required if reality was to correspond to the law.

12. One way to achieve that would undoubtedly be to stress the need to apply the existing enforcement machinery by invoking the relevant provisions of the Charter,

(Mr. Jacovides, Cyprus)

in particular Chapter VII. While the veto was often cited as the cause of failure to apply that machinery, there were in fact many situations in which the veto could not be blamed and where unanimously adopted Security Council resolutions would, if applied through enforcement action, solve the problem. It had been said that what was lacking was the political will to apply existing machinery effectively, and his delegation would therefore welcome some evidence of that will on the part of Member States.

13. Another solution would be to draft the proposed world treaty on the basis of the corresponding provisions of the Charter. Such an instrument would not, and indeed could not, derogate from those provisions but might in fact refine them by taking into account the wealth of jurisprudence which had accumulated within and outside the United Nations in the past 33 years. The significant developments which had taken place in international life during that period had in fact profoundly altered international law and relations. For instance, the recognition of the legitimacy of the struggle of colonial and other dependent peoples for liberation was now firmly established, even though it was not expressly stated in the Charter, while the principle of domestic jurisprudence had been gradually eroded, particularly where racial discrimination and similar violations of human rights were involved.

14. The Charter could therefore be improved upon in the light of experience without prejudicing its fundamental validity. Moreover, if it became clear to the Committee that a new and generally acceptable legal instrument could be drafted which removed the ambiguities and loopholes that had given rise to abuses in the past, that would help to enhance the principle of the non-use of force and to remove any pretext for its violation.

15. With regard to the draft Treaty contained in document A/AC.193/L.3, he noted that it made no provision for the exceptions recognized under the Charter to which he had referred earlier. In that connexion, he first wished to reiterate that any reference to self-defence in an eventual treaty should be interpreted strictly in accordance with Article 51 of the Charter in order to exclude anticipatory self-defence or other abuses of the exception. Similarly, the exception regarding enforcement action taken by the Security Council should be highlighted. Reference should also be made to the emergent rule that liberation struggles against colonial domination, and international support for such struggles, should not be covered by the prohibition on the use of force.

16. Secondly, not only should there be a reference to the obligation not to assist or encourage any State to use force in violation of the provisions of the Treaty but reference should also be made to Article 2, paragraph 5, of the Charter, under which States were obliged to assist the United Nations in any action taken in accordance with the Charter and to refrain from assisting any State against which the United Nations was taking preventive or enforcement action. As the draft Treaty made no provision for machinery for enforcing the obligations imposed on contracting parties by the Treaty, a reference to the Charter system of collective security and enforcement machinery appeared to be essential.

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(Mr. Jacovides, Cyprus)

17. Thirdly, there should be an explicit provision in the Treaty upholding the rights of countries and peoples which were the victims of aggression and foreign occupation as a result of the use of force, condemning the acquisition of territory by force and rejecting faits accomplis.

18. Fourthly, with reference to article III of the draft Treaty and in view of the abuse of past treaty provisions purporting to confer the right of one State to intervene by force against another, his delegation believed that that article should be qualified by reference to Article 103 of the Charter and to the relevant provisions of the 1969 Vienna Convention on the Law of Treaties regarding treaties imposed by the use of force and those containing provisions in violation of peremptory norms of international law.

19. The above suggestions were offered in a constructive spirit and might be modified subsequently in the light of any explanations received from the Soviet and other delegations. His delegation welcomed the Soviet draft as a basis for the Committee's work.

20. With regard to the principle of the peaceful settlement of international disputes, he drew attention to the provisions of Article 2, paragraph 3, of the Charter. It was a matter of grave concern that the principle of peaceful settlement of disputes had likewise not been strictly adhered to, and every effort should be made to remedy that situation. The principle in question was, after all, a corollary to the principle of the non-use of force. Moreover, it could be seen from the current work of the Conference on the Law of the Sea that attempts were being made to adopt an effective and comprehensive system for the settlement of disputes by means of compulsory third party adjudication which would preclude the gross abuses of the use of force which had all too often occurred in other areas of international law. His delegation fervently hoped that such attempts to learn from past experience would be successful.

21. It had been pointed out that several of the countries represented on the Committee had had bitter experience of violation of the principle of the non-use of force. Cyprus had been one of the most obvious victims of such violations and the aggression, invasion and occupation which it had suffered, together with their consequences, had been fully documented in the United Nations and elsewhere. Countless resolutions had been adopted, calling for an end to that situation and for effective action in that regard by the Security Council. Yet, four years after the invasion, the invader had still not complied with those resolutions, the international community had still taken no effective remedial action and the Security Council had so far failed to implement the relevant provisions of the Charter in order to enforce such compliance. Was that a state of affairs which could be tolerated and regarded with complacency? Was it not fair to say that all was not well with the way in which the ostensibly watertight system of collective security under the Charter was being applied in practice? Would it be unreasonable to conclude that something more was required if that system was to be effective in dealing with Cyprus or any similar case?

22. It might be argued that all the elements for remedying the situation were present and that all that was lacking was the political will to apply them. His

(Mr. Jacovides, Cyprus)

delegation had done all it could to induce the Security Council to supply that missing element of political will. It was also convinced, in the light of its own experience and that of many other small countries which had suffered from the illegal use of force, that there was room for improvement both in remedying existing situations and in avoiding such illegalities in the future. The Charter was of course an admirable document and had been interpreted dynamically over the years by a number of legal instruments, but if the wealth of jurisprudence which had accumulated over the past 33 years could be distilled and incorporated into a binding treaty of universal application which closed existing loopholes and took into account contemporary developments and if such a treaty could be adopted with the participation of what was now a much broader international community, that would surely be a worthwhile undertaking.

23. That was why his delegation supported the Soviet initiative, while recognizing that such an instrument should not detract from the equivalent provisions of the Charter but rather should enhance their application. If such an instrument could be drafted, it would make a valuable contribution to the legal regulation of the use of force in international relations. If, on the other hand, it became clear that there were more pitfalls than had been anticipated, at least all States would be reminded of the cardinal importance which the world attached to the strict application of the existing prohibition on the use of force and to the related principles of non-intervention, sovereign equality and respect for the territorial integrity and political independence of all States, large or small, as well as to the basic objective of general and complete disarmament.

24. Mr. HOUNGAVOU (Benin) pledged his delegation's full co-operation in drafting a treaty on the non-use of force in international relations. His country had a particular interest in the adoption of such a treaty, for in 1977 it had itself been a victim of the illegal use of force and it had been under the constant threat of force ever since.

25. The 1977 raid on Cotonou by imperialist mercenaries had forced his country to recognize the aggressive nature of imperialism and its refusal to accept defeat. Modern imperialism knew no bounds and it constantly violated the territorial integrity and independence of States and the human rights of their citizens. The Charter contained provisions which, if applied, especially by the imperialist Powers, would guarantee international peace and security and ensure that small, defenceless countries were free from exploitation and foreign domination. Imperialism, however, was determined to perpetuate the international status quo and to oppose by all possible means the struggle of peoples for liberation and political and economic independence.

26. Thus, in southern Africa, imperialism continued to protect the racist régimes in order to maintain its domination and went so far as to violate sanctions against Southern Rhodesia and to provide the southern African régimes with weapons to massacre the African people. Indeed, imperialism was to be found behind every violation of international peace and security. The United Nations must therefore redouble its efforts to force the imperialist Powers to respect the principle of the non-use of force in international relations.

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(Mr. Houngavou, Benin)

27. The draft Treaty contained in document A/AC.193/L.3 represented a major effort to conceptualize the principles laid down in the Charter. His delegation supported the terms of the draft and would do all it could to help to produce a treaty which would finally put an end to international mercenary intervention. The use of international mercenaries was an age-old weapon which had been revived recently by the neo-colonialist and imperialist Powers in order to oppress small nations. In fact, such mercenaries were an outward manifestation of the decline of international capitalism, which used them to perpetrate violence on a massive scale. As such, they and their backers should be given no quarter. The tide of economic and political development of peoples would not be stemmed, and his country and others like it would oppose any effort either to destabilize their peaceful struggle against the political and economic status quo or to perpetuate the racist régimes in southern Africa.

28. Violation of the principle of the non-use of force was a constant feature of contemporary international life, and his Government would continue to denounce such imperialist manoeuvres and all impediments to the work of the Committee.

The meeting rose at noon.